

810-6-1-.46.01 Bleacher Systems, Lockers, Backstops, and Other Fixtures Installed in Gymnasiums.

(1) Materials or fixtures which are purchased by contractors and are intended to become permanently affixed or attached to gymnasiums, or other realty, are "building materials" and are taxable at the time of purchase by the contractor. (See Rules 810-6-1-.27 and 810-6-1-.28) (Sections 40-23-1(a)(10) and 40-23-60(5))

(a) Prior to ~~October~~ January 1, 200014, these purchases are taxable even when the materials are used by the contractor in furnish and install contracts with tax-exempt governmental entities and tax-exempt educational institutions. A contractor that sells the materials to a tax-exempt entity under one contract and affixes the materials to realty under a second contract with the same tax-exempt entity is liable for sales or use tax; the fact that the materials are sold and installed under separate contracts does not qualify the contractor's purchase of materials for the sales or use tax exemptions found in Sections 40-23-4(a)(11), 40-23-4(a)(15), 40-23-4(a)(17), 40-23-62(2), 40-23-62(13), and 40-23-62(16). (State of Alabama v. Algernon Blair Industrial Contractors, Inc., 362 So. 2d 248 (Ala. Civ. App. 1978) and Alabama Precast Products, Inc. v. Charles A. Boswell, 357 So. 2d 985 (Ala. 1978)). On and after ~~October~~ January 1, 200014, however, purchases by contractors which do not qualify for the exemptions in Sections 40-23-4(a)(11), 40-23-4(a)(15), 40-23-4(a)(17), 40-23-62(2), 40-23-62(13), and 40-23-62(16) may qualify for the sales and use tax exemption outlined in paragraph (1)(b) below. (Rule 810-6-3-.69.02)

(b) On and after ~~October~~ January 1, 200014, the sale of materials or fixtures to, or the storage, use, or consumption of materials or fixtures by, any contractor or subcontractor to be permanently affixed or attached to gymnasiums or other realty pursuant to a contract awarded ~~prior to on or after~~ July January 1, 20014, with a governmental entity, as defined in Rule 810-6-3-.77 entitled Exemption of Certain Purchases by Contractors and Subcontractors in Conjunction with Construction Contracts with Certain Governmental Entities, the United States government, the State of Alabama, a county or incorporated municipality of the State of Alabama, or a federal, state, county, or municipal educational institution is exempt from state, county, and municipal sales and use taxes provided the contractor or subcontractor has complied with all provisions of said rule. Rule 810-6-3-.77 entitled Exemption of Certain Purchases by Contractors and Subcontractors in conjunction with Construction Contracts with Certain Governmental Entities, Public Corporations, and Educational Institutions. (Section 40-9-33, Code of Alabama 1975)

(2) Criteria used in determining whether materials furnished and installed in gymnasiums, or other realty, become additions to real property include but are not limited to the following: the materials are physically attached to the realty with bolts; the materials when attached are intended to be permanent and are easily identified with a part of the realty; and the materials are appropriate to the realty to which they are attached--that is the materials or fixtures perform a function appropriate to the real property and such function is necessary or convenient to the normal and appropriate uses of the real property. Examples of these items include but are not limited to the

following: wall-attached telescopic bleacher systems, reverse-fold telescopic bleacher systems, lockers, and basketball backstops.

(3) Materials which (i) are not intended to become permanently affixed or attached to gymnasiums, or other realty, (ii) are intended to be mobile, and (iii) do, in fact, retain their identity as tangible personal property; qualify for the sales or use tax exemptions found in Sections 40-23-4(a)(11), 40-23-4(a)(15), 40-23-4(a)(17), 40-23-62(2), 40-23-62(13), and 40-23-62(16) when sold to tax-exempt governmental entities or tax-exempt educational institutions. These items are subject to sales or use tax when sold to nonexempt entities. Criteria used in determining whether materials remain tangible personal property include but are not limited to the following: the materials are not intended to become permanently affixed to realty; the materials can be easily moved from one location to another, and can even be stored out of sight or moved from building to building. An example of an item of this nature includes, but is not limited to, a mobile telescopic bleacher system. (Sections 40-23-1(a)(10) and 40-23-60(5))

~~(4) On and after July 1, 2004, the sale to, or the storage, use, or consumption by, any contractor or subcontractor of any tangible personal property to be incorporated into realty pursuant to a contract with the United States government, the State of Alabama or a county or incorporated municipality of the State of Alabama is subject to all state, county, and municipal sales and use taxes for any contract awarded, or any portion of a contract which is revised, renegotiated, or otherwise altered on and after July 1, 2004, to the extent that such revision, renegotiation, or alteration requires the purchase of additional tangible personal property. If the "change order" or revision does not require the purchase of additional tangible personal property, the change will not cause the contract to lose its exempt status. Items purchased after June 30, 2004, pursuant to a contract awarded prior to July 1, 2004, will continue to be exempt for the remainder of the contract to the extent that any post June 30, 2004, revision or amendment does not require the purchase of additional tangible personal property.~~

Author: Traci Floyd, Ginger L. Buchanan

Authority: Sections 40-2A-7(a)(5), 40-23-31, 40-23-83, 40-23-1(a)(10) 40-23-60(5), and 40-9-33, Code of Alabama 1975

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